

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Matthew Henry Collanzo

v.

Civil No. 10-cv-009-JL

Richard M. Gerry, Warden,
New Hampshire State Prison

ORDER

Before the court is pro se petitioner Matthew Henry Collanzo's petition for a writ of habeas corpus (doc. no. 1), filed pursuant to 28 U.S.C. § 2254. The matter is before me for preliminary review to determine whether or not the claims raised in the petition are facially valid and may proceed. See Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts ("§ 2254 Rules"); United States District Court District of New Hampshire Local Rule ("LR") 4.3(d)(2) (authorizing magistrate judge to conduct preliminary review of pro se pleadings).

In the Report and Recommendation issued this date, I have construed all of Collanzo's claims, numbered 1-12 in the Report and Recommendation, as implicating violations of federal constitutional rights. I have recommended that the court dismiss Collanzo's Fourth Amendment claim, Claim 2. None of Collanzo's

remaining claims may proceed at this time. Collanzo has not carried his burden of demonstrating that he has exhausted his state court remedies as to any of these cognizable federal constitutional claims: specifically, Claim 8, based on his Sixth Amendment right to confront witnesses; Claim 12, based on his Sixth Amendment right to effective assistance of counsel, and the remaining claims (Claims 1, 3-7, and 11) based on his Sixth and Fourteenth Amendment rights to due process and a fair trial.

Collanzo has requested in his petition (doc. no. 1) that this court stay the petition and hold it in abeyance to provide him with time to determine whether to file a habeas petition in state court, before the one-year statute of limitations runs out for a § 2254 petition, see 28 U.S.C. § 2244(d). Collanzo has informed the court that he has asked an attorney to review his case for the purposes of filing a state habeas petition.

I construe Collanzo's request in the petition as a motion for a stay pending his exhaustion of state court remedies as to his federal constitutional claims. I hereby grant the motion, as specified below.

Conclusion

Collanzo must amend his petition to demonstrate exhaustion

of his federal constitutional claims. To that end:

1. This matter is stayed pending Collanzo's litigation of matters in state court to exhaust his cognizable federal claims (Claims 1 and 3-12 in the Report and Recommendation).

2. Collanzo must file an action to exhaust each of his federal claims in State court within thirty (30) days of the date of this Order.

3. While this matter is stayed, Collanzo must notify this Court of the status of the state court proceedings every ninety days. Once the New Hampshire Supreme Court has issued a final decision in the state court matter, Collanzo must so notify this Court within thirty days of that decision, providing this Court, at that time, with complete copies of documents filed in the state courts demonstrating that each federal claim has been exhausted in the state courts. Collanzo should also provide this Court with complete copies of any orders or opinions issued by the state courts relative to the claims.

Should Collanzo fail to amend his petition as directed, or otherwise fail to comply with this Order, the petition may be dismissed for failure to demonstrate exhaustion. See 28 U.S.C. § 2254(b).

SO ORDERED.

/s/ Justo Arenas
Justo Arenas
United States Magistrate Judge

Date: January 29, 2010

cc: Matthew Henry Collanzo, pro se

JA:nmd